



# WORKING GROUP ON COMMUNITY RIGHT-TO-KNOW

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## Statement of Paul Orum at the First "Government in the Sunshine" Meeting of the Chemical Safety and Hazard Investigation Board December 9, 1999

I am Paul Orum, coordinator of the Working Group on Community Right-to-Know. The Working Group coordinates public interest groups that have long supported the Chemical Safety and Hazard Investigation Board. These environmental, labor, public health, and community groups want effective root cause investigations and public reports on chemical accidents. Public reports by an expert, independent agency are a fundamental part of community right-to-know.

For example, participants supported establishment of the board, organized letters of support, wrote op-eds, and participated in public forums to provide guidance to the board.

Today's "Government in the Sunshine" meeting is critically important to confront the apparent mismanagement that has paralyzed the board and made it unable to do its job. We applaud the board for taking steps to improve governance, clarify roles, and ensure better management.

According to the board's own general counsel, the board *as a whole* establishes the rules necessary to carry out the board's functions and duties. This includes establishing general policies; setting budget priorities; approving high-level appointments; and apportioning funds among program areas. Further, the board sets rules that govern investigations; oversees contracts, leases, and agreements; approves findings and determinations; and so forth.<sup>1</sup>

Further, the board's own legal analysis makes clear that "the board" plainly includes all members (five when fully appointed). A recent letter from Senator Frank Lautenberg, a leading Congressional sponsor of the board, reaffirms that the board's core functions must be performed "by the board as a whole."<sup>2</sup>

The law says that the "Board is authorized to establish such procedural and administrative rules as are necessary to the exercise of its functions and duties."<sup>3</sup> In contrast, the board chair has responsibility for day-to-day direction and internal administration, *as delegated by the board*. Notably, the chair of the National Transportation Safety Board also receives oversight and consent through the NTSB board as a whole.

The important goal is the board's ability to carry out its mission. The board's inability to complete any investigation reports since June 1999 raises questions that go beyond well-known funding constraints. These questions include:

- What legal analysis suggests that the board chair may act without adhering to the rules established by the board? Which legal experts support these claims?
- Why was a budget developed and transmitted to Congress without consulting the board?
- Why has the chair not participated in board meetings, and why has the chief operating officer not followed specific board directives? If the chair delegated certain authorities to the chief operating officer during an absence, why then did the chair not also delegate supervisory oversight of the chief operating officer?
- Why has the board apparently been unable to:
  - Produce an investigation strategy, including selection criteria?
  - Develop a safety program strategy?
  - Establish an internal audit protocol of its investigations?
  - Obtain sufficient in-house expertise to complete more investigations?
  - Complete written procedures for contracting?
  - Prepare a complete business plan?
  - Conduct a comparative assessment of National Transportation Safety Board operations?
  - Work in a public manner with interested parties toward full reporting and tracking of accidental chemical releases?
  - Produce an annual report to Congress as required?

These are the basic building blocks of a functioning management structure. We are concerned that the board currently cannot carry out its core safety responsibilities, especially given the potential for Y2K-related computer failures to trigger chemical accidents.

Make no mistake, the board has already shown its value to the public, as documented in our recent report, "Accidents Waiting to Happen" ([www.ChemicalAccident.com](http://www.ChemicalAccident.com)). The board's first investigation was into a deadly explosion at Sierra Chemical in Nevada. Sierra Chemical claimed sabotage but the board used seismic analysis to disprove this claim. The board instead faulted the company's hazard analysis, training program, operating procedure, building design, safety inspection, and employee participation efforts -- as well as lax government oversight.<sup>4</sup>

There is growing concern, however, among the public interest organizations that fought to establish the board, that misappropriation of authority and mismanagement are impeding the board's ability to carry out its core duties.

1. Memorandum to the CSB Board on Board Governance Issues from Christopher Warner, General Counsel, Paul-Noel Chretien, Deputy General Counsel, and Raymond Porfiri, Attorney-Advisor, August 30, 1999.

2. Letter from Senator Frank Lautenberg to the U.S. Chemical Safety and Hazard Investigation Board, December 1, 1999.

3. Clean Air Act Amendments, Section 112(r)(6)(N).

4. *Accidents Waiting to Happen*, U.S. PIRG and Working Group on Community Right-to-Know, December 1999.